

§ 1965.218

agency under Public Law 103-354 for the file.

(e) *Servicing Office actions when a transfer and subsequent loan is authorized.* When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the assumption to the State Office for approval in accordance with §1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee in accordance with paragraph XV B 1 of exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with §1965.204 (b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in exhibit A-2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of exhibit E of subpart C of part 1930 of this

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chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

[58 FR 38931, July 21, 1993, as amended at 61 FR 39852, July 31, 1996]

§ 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements.

(a) *No offer to purchase.*(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that all organizations whose names were provided by the District or State Office were contacted in accordance with §1965.216 (b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. Note: (An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA or its successor agency under Public Law 103-354 funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15

months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

§ 1965.219 FmHA or its successor agency under Public Law 103-354 processing of prepayment.

When a prepayment is accepted in accordance with § 1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of § 1965.215 (e)(1), (2), (3), (4), and (8) of this subpart.

§§ 1965.220-1965.221 [Reserved]

§ 1965.222 Violations of restrictive-use provisions.

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in exhibit A-3 or A-4 of this subpart or the Restrictive-Use Agreements set out in exhibits G-1 thru 4 of this subpart by the owner of a previously FmHA or its successor agency under Public Law 103-354-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other ap-

propriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

§ 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA or its successor agency under Public Law 103-354 Guide Letters 1955-A-1 or 1955-A-2 (available in any FmHA or its successor agency under Public Law 103-354 office). Any FmHA or its successor agency under Public Law 103-354 loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any FmHA or its successor agency under Public Law 103-354 loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, only if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in exhibit A-3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(b) *Foreclosure.* If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with exhibit A-3 or A-4 of this subpart and paragraph (a) of this section.

(c) *Inventory property.* Restrictive-use provisions will be retained for projects taken into or sold out of FmHA or its successor agency under Public Law 103-354 inventory in accordance with exhibits A-1 through A-4 of this subpart and